courts. It would perhaps be well for those who are anxious for the preservation of the jury system, at a time when much dissatisfaction is felt with its practical operation, to consider whether the danger of judges influencing juries to give unjust verdicts is so serious as to make it advisable to diminish the practical efficiency of jury trials by preventing the judge from giving the jury the benefit of his generally superior powers of reasoning and wide experience in the facts of cases.

LIBEL AND CRITICISM. — A scientific man has written a book in which he attempts to disprove the existence of the force of gravity. A scientific newspaper, in reviewing the book, attempted to show by way of criticism that the author does not know enough to be able to appreciate the force of the argument by which the law of gravitation is proved. The author says that this is a false and malicious libel, and that it has damaged him to the extent of thousands of dollars.

Criticism in good faith of an author's work is allowed almost without restriction; but the law guards the private individual as distinguished from the man in his public capacity. It does not permit the critic to go behind the book to attack the author as a private person. On these principles Mr. Ruskin, in speaking of Mr. Whistler's paintings, was able with impunity to charge the artist with the "cockney impudence" of asking two hundred guineas for "flinging a pot of paint in the public's face." But when he accused him of "wilful imposture," he overstepped the mark, and had to pay a farthing in damages. In the present case, the question is whether the imputation of ignorance has a legitimate bearing as criticism upon the book. If the imputation of ignorance is made as an inference from the book itself, it seems to have a clear connection with the credit to which the book is entitled. It is true that in an English case, *Dunne* v. *Anderson*, 3 Bing. 88, it was held to be libel for one, in criticising a petition to Parliament by a physician, to reflect upon the physician's knowledge of chemistry. But that case is to be distinguished from the present one, in that in presenting the petition the physician is not so distinctly before the public as the author in publishing a book. As Lord Cockburn says in *Strauss* v. *Francis*, 4 F. & F. 1114, "a man who publishes a book challenges criticism." The critic is strictly accountable for any damaging misstatement of fact; but here there is no such misstatement. If there were nothing in the book which might lead a reasonable man in the critic's position to take the same view, it might be held that this was not fair criticism. But the force of gravity is well enough established for the courts to take judicial cognizance of it; and they are hardly likely to hold that this statement, if made merely as a deduction from the author's treatment of his subject, was so unfounded as to be a libel, rather than a fair though strong criticism.

CONFLICT OF LAWS — PENAL STATUTES. — The extent to which courts will recognize rights acquired under foreign statutes is still more or less indeterminate. A few general propositions, to be sure, such as that penal statutes will not be enforced, are well established. But their application to concrete cases has proved by no means an easy task. Thus the familiar statutory action for the negligent causing of death has troubled the courts not a little. In the late case of *Dale* v. *R. R. Co.*, 47 Pac. Rep.

521, the Supreme Court of Kansas refused to enforce a liability incurred in New Mexico, under a statute providing that in case any person should be killed through the negligence of a railroad official in the management of a train, the corporation should forfeit and pay five thousand dollars, which could be recovered by the husband or wife or minor children of the deceased. The court went largely on the ground that the statute was penal in its nature. Inasmuch as the sum recoverable was absolutely fixed, and in no way proportional to the injury received, it does look, perhaps, as if the legislature intended to inflict a penalty on the corporation rather than recompense the family of the deceased. The decision therefore seems right. In earlier days it was generally held that, even where the sum recoverable was not fixed, but was dependent upon the extent of the injury, the statute was penal in character; but in more recent times the trend of decisions has been, rightly enough it would seem, in the direction of holding statutes of that sort merely compensatory. Where such is the nature of the statute, rights acquired under it should certainly be enforced in any court having jurisdiction of the parties and the subject matter, exactly as though acquired through a common law tort. *Dennick* v. *R. R. Co.*, 103 U. S. 11.

In *Huntington* v. *Attrill*, [1893] A. C. 150, 155, Lord Watson declared that it was for the court called upon to give recognition to a right created by a foreign statute to determine the substance of the right, and whether or not its enforcement would involve the execution of a penal law. The Massachusetts court has recently handed down a decision at variance with this opinion. In *Coffing* v. *Dodge*, 45 N. E. Rep. 928, it was decided that the liability imposed on the stockholders of a corporation by a statute of another State would not be enforced in Massachusetts, unless the liability was held contractural by the courts of that State. This decision has been sharply criticised, but when interpreted properly seems correct. Of course the Massachusetts court must frame its own definition of penal statutes, and not rest content with the appellation bestowed on the statute by the foreign court. But the construction of a statute of another State is admittedly to be settled by the courts of that State; and, taken in a broad sense, this includes the determination of the substantial nature of the obligation intended to be created. The question for the Massachusetts court in *Coffing* v. *Dodge* was not whether the foreign court called the statute penal or contractual, but whether it regarded the statute as giving rise to an obligation of such a nature that it fell within the Massachusetts definition of penal laws.

THE AVAL THEORY OF ANOMALOUS INDORSEMENT. — Few problems in the law of commercial paper appear to have occasioned the courts greater perplexity than that of determining the liability of one who writes his name on the back of a bill or note to give it credit with the payee. A recent Ohio case, *Ewan* v. *Brooks-Waterfield Co.*, 45 N. E. Rep. 1094, deciding that this anomalous indorser is presumptively liable as a surety of the maker, represents but one of several conflicting views that obtain in the United States. See 1 Ames's Cases on Bills and Notes, 219–272; 1 Daniel on Negotiable Instruments, §§ 707–716.

While there is much to be said in favor of the view, adopted in New York and a few other States, which allows the payee to charge the anomalous signer as a regular indorser, it is submitted, nevertheless, that such a signer should more properly be regarded, not as a legal holder, but as